IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION

United States of America,	)	
	)	
Plaintiff,	)	Case No. 2:15-cr-95
	)	
vs.	)	
	)	**DEFENDANT PAUL MEAGHER'S**
	)	**SENTENCING MEMORANDUM**
Paul Bradley Meagher,	)	
Defendant.	)	

Defendant, Paul Bradley Meagher, by his attorney, Alexander F. Reichert, submits this memorandum to address issues pertinent to sentencing in his case.

FACTS

[¶ 1] On February 6, 2017, Mr. Meagher will appear before this Court for sentencing. In October, 2015, the North Dakota Bureau of Criminal Investigations (BCI) began investigating individuals who were trading child pornography. BCI Special Agent Jessie Smith observed a particular IP address located in Grand Forks, North Dakota that made attempts at particular files that were believed to contain child pornography. The IP address belonged to Paul Meagher who was a police officer employed by the University of North Dakota Police Department. On November 3, 2015, a search warrant was executed on Mr. Meagher's residence. During the search, the officers found a computer, hard drive, and CD containing child pornography. On November 18, 2015, a three-count indictment was filed charging Mr. Meagher with one count of Receipt of Materials Containing Child Pornography, and two counts of Possession of Materials Containing Child Pornography. Mr. Meagher was arrested on November 23, 2015. On August 2, 2016, a plea agreement was filed and on September 9, 2016, Mr. Meagher pled guilty to three counts of the three-count indictment.

[¶ 2] Mr. Meagher has been extremely cooperative and forthcoming in this matter from his first law enforcement encounter and throughout the investigation. He has fully accepted responsibility for his actions. Mr. Meagher does not dispute the gravity of the offense, nor does he dispute the harm his actions have caused to himself, his loved ones, society, and the victims. Mr. Meagher is very remorseful, evidenced through his PSIR as well as communications with Counsel. Mr. Meagher has expressed guilt and shame for the offense. His Post Conviction Risk Assessment classifies him as a Level 1, indicating the lowest risk to reoffend. Based upon Mr. Meagher's acceptance of responsibility, remorse, character, outstanding support system, and his willingness to provide restitution, he is respectfully requesting this Court impose concurrent sentences below the guideline range.

LAW GOVERNING SENTENCING

Sentencing Guidelines

On January 12, 2005, the United States Supreme Court held that the mandatory application of the United States Sentencing Guidelines violated the Sixth Amendment to the United States Constitution. See United States v. Booker, 125 S. Ct. 738, 75-57 (2005). Under Booker, a defendant's constitutional rights are not violated when the Court considers the guidelines in an advisory basis, as opposed to being strictly bound by the guidelines. As a result, sentencing courts must calculate and consider the applicable guidelines range as one factor in determining the appropriate sentence. Id.

In United States v. Rita, 127 S. Ct. 2456 (2007), the Supreme Court examined the process used by the District Court during sentencing. The Court noted:

> The sentencing judge, as a matter of process, will normally begin by considering the presentence report and its interpretation of the Guidelines. He may hear arguments by prosecution or defense that the Guidelines sentence should not apply, perhaps because (as the Guidelines themselves foresee) the case at hand falls outside the "heartland" to which the Commission intends individual

> Guidelines to apply, … perhaps because the Guidelines sentence itself fails properly to reflect § 3553(a) considerations, or perhaps because the case warrants a different sentence regardless. Thus, the sentencing court subjects the defendant's sentence to the thorough adversarial testing contemplated by federal sentencing procedure. In determining the merits of these arguments, the sentencing court does not enjoy the benefit of a legal resumption that the Guidelines sentence should apply.

Rita, 127 S. Ct. at 2456 (internal citations omitted.)

Therefore, as the Court noted in Rita, this Court should engage in an analysis to determine any warranted departure from the guidelines. This Court must determine a sentence that is "sufficient, but not greater than necessary, to comply with the purposes [of sentencing]." The District Court need not apply a presumption of reasonableness to the listed guidelines amount, but instead "must … consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." Id. at 272-73 (Justice Stevens concurring) (quoting Koon v. United States, 518 U.S. 81, 113 (1996).

Further, the District Court has "limited authority to impose a sentence below a statutory minimum," upon motion of the government, "so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense." 18 U.S.C. § 3553(e).

[¶ 2] Per the terms of the plea agreement, the Government will recommend a sentence at the low end of the applicable guideline range. According to both the plea agreement and the Presentence Investigation Report (PSIR), the guideline provisions indicate a final offense level of 34 and a criminal history category of I, with a guideline imprisonment range of 151-188 months.

ANALYSIS

The Defendant, Paul Bradley Meagher, respectfully requests this Court sentence him to 60 months incarceration.

In imposing a sentence, the Court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in 18 U.S.C. § 3553(a). In determining a proper sentence, the Court must consider the nature and circumstances of the offense and the history and characteristics of the Defendant. The sentence should reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes, and provide the defendant with needed education or vocational training, medical care, or other correction treatment in the most effective manner.

District courts may determine the weight to give to the guidelines in any given case:

> The district court may determine on a case-by-case basis the relative weight to give the Guidelines in light of other 3553(a) factors. In some cases it may be appropriate to defer to the Guidelines; in others not.

United States v. Lazano, 490 F.3d 1317, 1324 (11th Cir. 2007). Specific characteristics of individual defendants, which district courts were once prohibited or discouraged from considered may now be considered. *See* Rita, *supra*, at 2473. Matters such as age, education, mental or emotional condition, and medical conditions, including drug or alcohol addiction are matters that § 3553(a) authorizes sentencing judges to consider. Id.

Mr. Meagher has been proactive in changing his lifestyle, has shown serious remorse, has taken responsibility for his actions, and has a very strong support system. A sentence below the guideline range calculated by the probation office would be sufficient to accomplish the goals of sentencing.

Mr. Meagher was arrested on November 23, 2015, and was in custody until November 25, 2015 when he placed bond. Immediately after being released, Mr. Meagher obtained a job in order to contribute to society. Mr. Meagher has been extremely cooperative during the course of the investigation. He was extremely forthcoming and honest during his PSI interview, repeatedly expressing guilt and remorse for his actions. Mr. Meagher asserts to this Court that the offense in this matter is completely out of character for him, and does not define him as a person. The letters in support of Mr. Meagher are evidence of this. Mr. Meagher has been nothing short of a model citizen his entire life. During his presentence interview, Mr. Meagher reiterated the fact he became a police officer because he had always admired them. He lived across the street from a police officer growing up and he "always wanted to help out and make things better" in the community.

Mr. Meagher understands the severity of his crime and the seriousness of his addiction. He realizes the negative impact his actions have had on the individuals that were subject to these egregious activities. Mr. Meagher has also realized the pain that it has caused him with regards to his family, career, and other areas of his life. However, Mr. Meagher's familial networks are extremely strong and have helped him fight his addiction and encourages him to be a better person. Mr. Meagher understands the need for punishment and even went as far as saying that he can now get the help he needs to become fully rehabilitated.

Mr. Meagher did not have a criminal record before this incident. During his assessment interview, Mr. Meagher was questioned about many different aspects of his life. Mr. Meagher's mother corroborated much of the information he provided. Mr. Meagher has a steady employment record and educational background. Mr. Meagher graduated from Thompson Public High School, completed two years of college at the University of North Dakota (UND), and attended Lake Region State College in Devils Lake, North Dakota where he completed basic peace officer training to become a licensed peace officer.

Mr. Meagher's employment history is exemplary. In 1993 he began working as a grounds keeper at UND and in 1995, began working at the Grand Forks County Juvenile Detention Center, where he worked for the next four years. In 1999, he began working as a correctional officer at the Grand Forks County Correctional Center. Records show that he was described as excellent, outstanding, and excellent with computers. In 2004 he began working for the McHenry County Sheriff's Department. Mr. Meagher worked there for four months until he was hired by the UND police department. He worked there for eleven years and was promoted to Field Training Officer (FTO). He was responsible in assisting with training newly hired officers and received good reviews on his work performance up until his termination on November 9, 2015. Mr. Meagher worked at Walmart in Grand Forks from December 2015 to September 2016 and also received good work reviews and got along well with his co-workers.

Mr. Meagher agrees with the PSIR assessment of him, but even with the thoroughness of the report, it cannot adequately describe the type of person Mr. Meagher is. The character letters filed in this case show the true character of him and Mr. Meagher urges the Court to read those letters to understand better who he really is. Mr. Meagher undoubtedly has positive support from his family and friends. His mother has spoke with regards to his character and said that he is a very kind and caring person and has 'never said a harsh word to anyone.' Mr. Meagher knows he violated the law and betrayed the public trust, "As a police officer, I had sworn to find people that do these things to children and bring them to justice, and I violated that oath and trust." Mr. Meagher is not trying to blame anyone but himself.

Any sentence imposed by this Court must reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense. Mr. Meagher, with the exception of the instant offense which he understands and accepts as harmful and unacceptable, undoubtedly respects the law. He was a police officer with the University of North Dakota for eleven years. He upheld and enforced the law with excellent reviews from his employer. Mr. Meagher acknowledges the seriousness of the offense and is unwavering in his belief he deserves to be punished for his actions. However, this case is an appropriate one for the Court to exercise its discretion and impose a sentence below the guideline range, based upon the sentencing factors enumerated in 18 U.S.C. § 3553(a). Mr. Meagher has lived an exemplary life aside from the instant offense, and is by all accounts, a model citizen.

To reiterate, Mr. Meagher is not making excuses for his conduct nor trying to shift the blame to anyone but himself. He has shown, and will continue to show extreme remorse and guilt for his conduct. He has been very cooperative in the entire investigation and has much to offer after his release. An aberrational course of events in an otherwise unblemished life should result in a sentence falling below the suggested guidelines range. Finally, Mr. Meagher is more than willing to pay restitution as ordered by this Court in order to alleviate in whatever way money can alleviate, the pain he has caused to the victims and their families.

CONCLUSION

For all the foregoing reasons the Defendant, Paul Bradley Meagher, respectfully requests the court to sentence him as follows:

2:15-cr-95: A term of 60 months imprisonment.

The Defendant would leave the term of supervised release to the judgment of the Court, but would request the Court waive as much of the fines as possible, as that money would better be spent compensating the victims in this case.

Further, for the reasons stated herein, Mr. Meagher respectfully requests this Court depart from the sentencing guidelines and sentence him in accordance with this memorandum.

Dated this 3rd day of February, 2017.

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